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Via e-mail to Andrew.Long@fcc.gov

Andrew Long, Esq.
Marlene H. Dortch, Secretary
Federal Communications Commission
Washington, DC 20554

**Re: Written *Ex Parte* Submission to Office of Commissioner Tate
MM Docket No. 99-325**

Dear Mr. Long:

I am writing on behalf of The Livingston Radio Company (“Livingston”) to request that you brief Commissioner Tate on a specific aspect of MM Docket No. 99-325, involving digital radio broadcasting, to which the Media Bureau appears to have given inadequate attention and that poses a serious threat of interference caused by “super power” FM stations. These stations operate with more power and/or antenna height than is normally permitted for their station class because of grandfathering under rules that were changed some four decades ago. Livingston is the licensee of Station WHMI-FM, Howell, Michigan, a Class A FM station with an intensely local program service that is the only broadcast station of any kind licensed anywhere in Livingston County. WHMI-FM is seriously impacted by interference from a super power grandfathered station.

While iBiquity Digital Corporation, developer of the IBOC digital FM broadcast system, has paid many visits to the offices of various Commissioners, their reports have conveniently failed to address the super power problem in the digital environment, even though at least 189 FM stations nationwide are threatened with serious new interference.

The analog interference problem becomes worse when FM stations implement digital operation, because of the fact that IBOC digital FM signals are intentionally transmitted on the first-adjacent channel to the analog signal. The digital signal causes co-channel interference to a first-adjacent channel station. The digital power is supposed to be 20 dB below the analog

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signal. That ratio is intended to minimize interference to the host station's analog signal, but in practice it also protects other stations whose analog signals are transmitted on that first-adjacent channel. When the digital station operates with "super power" facilities, however, the protection designed into the digital system is not afforded; and co-channel interference to stations on adjacent analog channels will occur in excess of the planned level. Co-channel interference is highly destructive, and no radio receiver can resist it.

Livingston's WHMI-FM operates first-adjacent to the most powerful super power station in the country outside of California. I am attaching an *ex parte* filing being submitted today in MM Docket No. 99-325, showing that using the sophisticated Longley-Rice method, interference from the digital signal of the super power station occurs in areas within WHMI-FM's protected service contour, as well as in very large areas outside the protected contour. This is new interference because it occurs in areas not subject to analog interference.

WHMI-FM is a stand-alone station and qualifies under almost any standard as a "small business." Nevertheless, Livingston has spent a great deal of its own money, without outside contributions, to document the extent of the interference problem. A copy of a study submitted (and paid for) by Livingston on October 21, 2004, is attached. It explains in detail how at least 189 stations will be victims of destructive interference from 73 super power stations. There will be 63 "victim" stations that will face interfering contour overlap over more than 50% of their protected service area; and of those, 14 stations will have overlap of 100% of their service area.

As the IBOC system approaches very widespread deployment, both iBiquity and the Media Bureau continue to bury their heads in the sand when it comes to the super power problem, because they do not have any answer for it. The only answer is to require super power stations to cut back to the same power and height limits that govern all the other stations in their class. Neither iBiquity nor the NAB is willing to advocate that solution, because too many of their large "clients" operate super power stations. However, as the agency responsible for pursuing the public interest, the Commission cannot ignore the problem, because the problem is too pervasive, and there are too many victim stations to ignore.

Victim stations like WHMI-FM depend on the Commission to protect their public service broadcast efforts and the livelihoods of their employees and owners. Many are locally owned and focus on the kind of local service that the Commission has vigorously promoted during the entire existence of the agency.

Livingston had hoped that the Media Bureau would issue a public notice inviting further comment or even a Further Notice of Proposed Rule Making. However, although Livingston owner Gregory Jablonski traveled to Washington to meet personally with the Media Bureau Staff *over a year ago*, nothing has happened.

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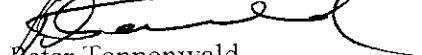
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Livingston asks Commissioner Tate not to get digital "stars in her eyes" over the promise of digital FM radio to the point where she fails to see or understand the problems with that technology. Digital technology shows great promise to improve radio broadcasting. But if the entire premise of allowing these signals to spill over into adjacent channels is that digital power limits will keep interference at an acceptable level, Livingston asks Commissioner Tate to help make sure that that everyone in the industry adheres to that premise. There is no justification for allowing stations that have been grandfathered at extra high power or height in the analog world to carry over that grandfathering into the new digital environment at the expense of other stations. The "expense" of other stations is not trivial when interfering contours extend over a station's own transmitter site and community of license, and in some cases over the station's entire service area.

Both the public interest and basic fairness to all stations require the Commission's attention to this issue and require action before all of the super powered stations start digital broadcasting. They are permitted under the current rules to transmit digital signals without any prior authority, by just giving notice to the Commission. iBiquity is licensing its system to as many companies as possible, as fast as it can. Only prompt action by the Commission can save the 189 victim stations. The number of victims is even higher, because Livingston's study encompassed only stations that are first-adjacent to super power stations and thus will receive co-channel interference. Many more stations are second-adjacent to super power stations and will receive first-adjacent channel interference, which is beyond the ability of virtually all consumer-grade FM receivers to resist.

The Media Bureau is giving considerable attention to interference problems with nighttime digital operation by AM stations. Livingston asks that the same attention be given to the FM super power problem. With AM, there is at least some perceived benefit in trading signal quality for fringe interference; but with super power FM stations, the victims will be wiped out with no benefit in return.

Very truly yours,



Peter Tannenwald

Counsel for The Livingston Radio Company

cc: John M. Burgett, Esq., Counsel for iBiquity Digital Corporation

Marissa G. Repp, Esq., Counsel for WBCT

Electronic filing in MM Docket No. 99-325